

REMARKS

Claims 11-14 and 16-19 are pending in this application. By this Amendment, claims 11-14 and 16 are amended and claim 15 is canceled without prejudice to, or disclaimer of, the subject matter recited therein. Support for amended claim 11 can be found at least in original claim 15. Support for amended claim 14 can be found at least at page 7, lines 15-17 of the specification. Claims 12, 13 and 16 are amended for clarity and to correct informalities. Thus, no new matter is added.

I. Restriction

Applicants' September 8, 2008 Response to Restriction Requirement provisionally elected Group II directed to claims 16 and 17 with traverse. Applicants' appreciate the indication that Group I, directed to claims 11-15, is rejoined with Group II and that claims 11-17 have been substantively examined. Claims 18 and 19 were withdrawn from consideration.

II. 35 U.S.C. §112 Rejection

The Office Action rejects claims 11-17 under 35 U.S.C. §112, second paragraph, as allegedly being indefinite. This rejection is respectfully traversed.

With regard to independent claim 11, the Office Action alleges that the specification fails to quantify the difference between the claimed "coarse mesh material," and a hypothetical non-coarse mesh material. Applicants respectfully disagree.

The specification states at page 3, line 26-page 4, line 2 that "it has been found that a mat with two or more layers of coarse mesh material can be effective in preventing the majority of the particulate matter under the mat from escaping." The specification further states at page 4, lines 1-2 that the textile pattern of the coarse mesh material pushes the mat onto the ground rather than creating an "uplift" effect. Therefore, the specification clearly identifies characteristics of coarse mesh material that differentiate it from the hypothetical non-coarse mesh material.

Claim 11 has also been amended to clarify that both the first and second coarse mesh materials include at least one of a natural fiber and a plastic fiber. Claims 12-14 and 16 are amended responsive to the rejection.

Accordingly, Applicants respectfully request withdrawal of the rejection.

III. 35 U.S.C. §102 Rejection

The Office Action rejects claims 11-15 under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Patent No. 5,870,785 to Hoorens, et al. ("Hoorens"). This rejection is respectfully traversed.

Hoorens fails to disclose "each layer of the mesh material has a wind attenuation factor between 40% and 80% for wind directed at right angles onto the mesh material at 50 km/h and the first layer is attached to the second layer in the peripheral region," as recited by independent claim 11. The Office Action acknowledges that Hoorens fails to explicitly disclose this feature, but alleges that the above-quoted features are inherent in the applied reference since the references allegedly disclose a substantially similar structure to that claimed in claim 11 (Office Action, page 5). Applicants respectfully disagree.

The fact that a certain characteristic may occur or be present in the applied reference is not sufficient to establish the inherency of that result of characteristic (MPEP § 2112(IV)). A basis must be provided in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the applied reference (MPEP §2112).

The wind attenuation range recited in claim 11, is the result of multiple factors. The specification states at page 6 that the presence of multiple layers increases the wind attenuation factor. The specification also states at page 6 that plastic fibers are smoother than natural fibers, and thus provide a lower degree of wind resistance and lower wind attenuation

factor. Additional factors stated in the specification are distance between the layers, stitch length, type of construction (mesh vs. woven), and porosity (specification pages 5-7).

As a result, the wind attenuation range recited in claim 11 has multiple factors that combine to affect the overall wind attenuation of the material. Claim 11 recites that each layer has a wind attenuation factor of 40% to 80% for wind directed at right angles onto the mesh. Accordingly, a combination of the above factors must be selected in order to achieve the recited wind attenuation and in order for the applied reference to anticipate the recited claim.¹ Not only is the reference silent as to these features, the field of endeavor of the applied reference, a mat for lying on, makes it highly improbable that one of ordinary skill in the art would have modified Hoorens as suggested by the Examiner.

Additionally, inherency must be present in each and every instance. Therefore, objective evidence or cogent technical reasoning must be provided to support the conclusion of inherency.

Applicants' assert that similar structure alone is not sufficient to support the conclusion of inherency. Further, the Examiner is required to present references that have the specified wind attenuation factor and the other claimed features, i.e., a first layer of coarse mesh material, a second layer of coarse mesh material, with each later including at least one of a natural fiber and a plastic fiber. Hoorens fails to disclose any particular wind attenuation characteristic. Instead, Hoorens merely discloses at col. 2, lines 37-39 that the bottom layer is impermeable only to moisture. In fact, it is entirely possible, and very likely, that Hoorens

¹ The recited feature can be analogized to claiming a circuit that has a resistor with resistance of 40-80 ohms. Merely because a similarly designed circuit has a resistor does not mean it inherently anticipates the claimed value. A resistor's resistance is dependent on a number of factors such as material selected, size of the conductor, cross-sectional shape of the conductor, temperature, etc. Thus, in order to anticipate the claimed 40-80 ohms, a resistor must be selected that combines the above-discussed factors to achieve the end result of 40-80 ohms.

discloses a fabric with a wind attenuation factor outside of the recited range. Specifically, it is likely that in selecting the fabric used in Hoorens, that one of ordinary skill in the art would select a weave density that allows very little air to pass through, therefore minimizing the amount of moisture that also permeates the fabric. Thus, it is likely that Hoorens discloses a wind attenuation factor outside of the claimed range.

Further, Hoorens fails to disclose that "the first layer is attached to the second layer in the peripheral region," as recited in independent claim 11. Rather, Hoorens discloses "oblique crossed monofilaments connect one side of each of the meshes of the top layer with a side of the bottom layer connected under the side of the top layer lying opposite, and conversely connect the side of the top layer with the side of the bottom layer" (col. 3, lines 8-13). Therefore, Hoorens discloses a mat that is not connected in the peripheral region as recited by independent claim 11, but rather is connected throughout the mat from the top side layer to the bottom side layer.

For at least the above reasons, Hoorens fails to disclose each and every feature recited in independent claim 11. Accordingly, Applicants respectfully request withdrawal of the rejection.

IV. 35 U.S.C. §103 Rejections

The Office Action rejects claims 11-15 under 35 U.S.C. §103(a) as allegedly being unpatentable over Hoorens; the Office Action further rejects claims 12-15 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Hoorens in view of U.S. Patent No. 2,774,127 to Secrist; and rejects claims 16 and 17 under 35 U.S.C. §103(a) as allegedly being unpatentable over Hoorens in view of WO 02/39857 to Reynolds. These rejections are respectfully traversed

As discussed above, Hoorens fails to disclose that "each layer of the mesh material has a wind attenuation factor between 40% and 80% for wind directed at right angles onto the

mesh material at 50 km/h and the first layer is attached to the second layer in the peripheral region." Secrist fails to at least cure this deficiency of Hoorens.

The Office Action alleges that Secrist discloses the above-quoted feature of claim 11 because Secrist discloses at col. 2, lines 30-37 that a frictional engagement and entanglement of the unspun fibers with each other and with the spun fibers contributes unusual tensile characteristics of the sheet material. However, Secrist is silent with regard to the wind attenuation characteristics of its mat.

The Office Action acknowledges that the applied references fail to specifically disclose the claimed wind attenuation characteristics, but alleges that the claimed characteristics are inherent in the applied references because the mats of the applied references allegedly have a substantially similar structure to the claimed mat (Office Action pg. 7).

Applicants respectfully submit that the overall wind attenuation factor of the mat is not inherent in the structure of the mat. In particular, as discussed above, the overall wind attenuation factor of the mat will depend on a number of factors.

Additionally, as discussed above, to establish inherency, evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency may not be established by probabilities or possibilities (MPEP §2112). The mere fact that a certain thing may result from a given set of circumstance is not sufficient (MPEP §2112). As discussed above in greater detail, the Examiner has failed to establish that Hoorens inherently discloses a wind attenuation factor between 40-80%.

The applied references taken alone or in combination, fail to disclose or render obvious the features of independent claim 11.

Therefore, independent claim 11 is patentable over the applied references. Claims 12-14, 16 and 17 are patentable at least for their various dependencies from independent claim 11, as well as for the additional features they recite.

Accordingly, Applicants respectfully request withdrawal of the rejection.

V. Conclusion

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of the claims are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



James A. Oliff
Registration No. 27,075

John A. Radi
Registration No. 59,345

JAO:TAP/mef

Date: March 10, 2009

OLIFF & BERRIDGE, PLC
P.O. Box 320850
Alexandria, Virginia 22320-4850
Telephone: (703) 836-6400

<p>DEPOSIT ACCOUNT USE AUTHORIZATION Please grant any extension necessary for entry; Charge any fee due to our Deposit Account No. 15-0461</p>
--